IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7264 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CK GURJAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7264 of 1997

MR JT TRIVEDI for Petitioner No. 1-2

MS DEVYANI N DAVE for Petitioner No. 1,2

Mr. LR Poojari, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 24/03/2004

ORAL JUDGEMENT

Heard the learned advocates appearing for the parties. In the present Special Civil Application, the petitioners have challenged the order passed by the respondents vide communication bearing Ref. No. Ubak/D P/V/97-98/K.P. 14117/18 dated 25.9.1997. This Court has admitted the petition by order dated 23rd July 1998 and

has also granted interim relief staying operation and implementation of the aforesaid letter/order.

2. That the petitioner-institution was granted permission to run Home Science/Computer Science Course and for that purpose appointments of Computer Operator and Full-Time Lecturer in Computer Science were to be made and respondent No.2 herein by order dated 29.7.1994 granted approval for the post of Computer Programmer (Full Time). However, the said post was unreserved. That thereafter the petitioner No.2 invited application by giving advertisement in the local newspaper and 57 candidates applied. However as 38 candidates were fulfilling requisite qualifications, they were called for the interview and they appeared before the Selection Committee. That the Selection Committee comprising of Managing Trustee of petitioner No.2, representative of the State Government, subject expert, and predecessor of the petitioner No.1 had selected one Kailash Chhaganlal Bhuva. That even the State Government also approved the selection of the said Kailash Chhaganlal Bhuva as Computer Operator and accordingly said SHri Bhuva was given appointment by order dated 13.9.1994 and he joined the service on 14.9.1994. It is further the case of the petitioner that likewise one Kum. Rupal M.Somani was selected as Part Time Lecturer in Computer Science after going through the process of selection and she served the college from 15.9.1994 to 15.7.1995 and thereafter she left the job. It is the further case of the petitioners that respondent No.2 was also apprised of the selection and appointment of said Kailash Chhaganlal Bhuva and the respondent No.2 also granted approval by communicated 11.10.1994.

3. That thereafter office of respondent No.2 had asked for submitting necessary documents with regard to sanction granted by the State Government for starting Computer subjects which were complied with by the petitioners. It has also come on record that even the Bhavnagar University has also written two letters to the State Government to issue necessary notification with regard to starting of the aforesaid courses, but nothing was done. No further action was taken by the State Government with regard to issuance of notification. That thereafter by order/communication dated 25.9.1997, the respondent No.2 has passed an order stopping the salary which was paid to Kum. Rupal M. Somani, and Kailash Chhaganlal Bhuva which they were getting under direct payment scheme with effect from 1.7.1997 and he has also further passed an order with regard to recovery of salary paid to the aforesaid 2 employees from the date of their

appointment till 30th September 1997. That the said order is the subject matter of the present Special CIvil Application.

4. There is no affidavit-in-reply filed by the respondents controverting the averments made in the aforesaid Special Civil Application. It is the case of the petitioner that before passing the impugned order dated 25.9.1997 with regard to stopping salaries with effect from 1.10.1997 against aforesaid two employees and with regard to recovery of salaries paid to the aforesaid two employees no opportunity of being heard is given to the petitioners and that the said order has been passed behind the back of the petitioners without issuing show cause notice as to why the recovery should not be made and the salary should not be stopped.

5. On the other hand, Mr. Poojari, learned AGP appearing on behalf of the respondents has submitted that the petitioners have not produced any notification regarding starting of Computer Science by the State Government and the authority was justified in passing the order dated 25.9.1997 with regard to stopping salaries against aforesaid two employees and with regard to recovery of the salary paid to the aforesaid 2 employees from their date of appointment and therefore he has requested to dismiss the petition.

6. I have considered the rival submissions made on behalf of the parties. I have also perused the order dated 25.9.1997. Before passing the impugned order dated 25.9.1997 with regard to stopping the salaries and with regard to recovery of salary paid to the aforesaid 2 employees no opportunity of being heard has been given to the said employees nor any show cause notice is issued to the petitioners to show cause as to why there should not be any recovery of the salary paid to the aforesaid 2 employees, nor any opportunity of hearing was given to the aforesaid 2 employees. As the impugned order dated is passed 25.9.1997 without giving opportunity of hearing to the petitioners and as the same is in violation of principles of natural justice, on this ground alone, the impugned order is required to be quashed and set aside. Accordingly, the impugned order dated 25.9.1997 is quashed and set aside. It will be open for the respondent No.2 to pass a fresh order after affording opportunity of being heard to the petitioner and the concerned persons, if so advised. Rule is made absolute with no order as to costs.

rmr. [M.R. Shah, J.]